HONORABLE THOMAS S. ZILLY 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE 8 9 CHAD EICHENBERGER, individually and on behalf of all others similarly situated, NO. 2:14-CV-00463 10 11 Plaintiff, DECLARATION OF BRYAN H. HECKENLIVELY IN SUPPORT OF 12 **DEFENDANT'S MOTION TO DISMISS** v. PLAINTIFF'S SECOND AMENDED 13 ESPN, INC., a Delaware corporation, **COMPLAINT** 14 Defendant. 15 16 17 I, Bryan H. Heckenlively, declare as follows: 18 1. I am an attorney in the law firm of Munger, Tolles & Olson LLP, attorneys for 19 Defendant ESPN, Inc. ("ESPN") in this action. I submit this declaration in support of ESPN's 20 concurrently filed Motion to Dismiss Plaintiff's Second Amended Complaint. I make this 21 declaration based upon my personal knowledge and, if called as a witness, I could and would 22 testify competently to the facts set forth below. 23 2. On January 24, 2015, I downloaded a decision issued on January 23, 2015 by the United States District Court for the Northern District of Georgia in Terry Locklear v. Dow Jones 24 & Company, Inc., Case No. 1:14-cv-00744-MHC. A true and correct copy of this document is 25 attached hereto as Exhibit A. 26 CAIRNCROSS & HEMPELMANN, P.S. DECLARATION OF BRYAN H. HECKENLIVELY IN ATTORNEYS AT LAW SUPPORT OF DEFENDANT'S MOTION TO DISMISS 524 Second Avenue, Suite 500 PLAINTIFF'S SECOND AMENDED COMPLAINT- 1 Seattle, Washington 98104-2323 office 206 587 0700 fax 206 587 2308 (No. 2:14-CV-00463)

25761566.1

1	2. On July 30, 2014, I caused Adobe's privacy policy for "Analytics and on-site
2	personalization services" to be printed from Adobe's website, available at
3	http://www.adobe.com/content/dotcom/en/privacy/analytics.html. A true and correct copy of
4	this document is attached hereto as Exhibit B. This document is cited in paragraph 22 of
5	Plaintiff's Second Amended Complaint on pages 6 and 7.
6	3. On February 11, 2015, I downloaded a document titled ESPN <i>Mobile</i>
7	Performance Targeting Insights, Spring 2012, from the website of ESPN,
8	http://espncms.com/ESPNCMS/files/0c/0cc69d16-781c-4566-bbb8-9d308ee9d5a3.pdf. A true
9	and correct copy of this document is attached hereto as Exhibit C. This document is cited in
10	paragraph 24 of Plaintiff's Second Amended Complaint on page 7.
11	4. On July 30, 2014, I caused an interview with Adobe employee Christopher
12	Comstock to be printed from the website of ad exchanger, available at
13	http://www.adexchanger.com/data-exchanges/the-cross-device-question-adobe/. A true and
14	correct copy of this document is attached hereto as Exhibit D. This document was cited in
15	paragraphs 26, 27, and 31 of Plaintiff's First Amended Complaint on pages 7 through 9.
16	I declare under penalty of perjury under the laws of the United States and the State of
17	Washington that the foregoing is true and correct.
18	Executed this 11 th day of February, 2015, in San Francisco, California.
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20	<u>s/ Bryan H. Heckenlively</u> Bryan H. Heckenlively
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DECLARATION OF BRYAN H. HECKENLIVELY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT- 2 (No. 2:14-CV-00463) 25761566.1 CAIRNCROSS & HEMPELMANN, P.S. ATTORNEYS AT LAW 524 Second Avenue, Suite 500 Seattle, Washington 98104-2323 office 206 587 0700 fax 206 587 2308

1	<u>Certificate of Service</u>
2	I, Bryan H. Heckenlively, certify under penalty of perjury that on February 11, 2015, I
3	electronically filed this document entitled Declaration of Bryan H. Heckenlively in Support of
4	Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, and Exhibits A-D thereto,
5	using the CM/ECF system which will send notification of such filing to the following persons:
6	Clifford A. Cantor 627 208 th Avenue SE
7	Sammamish, WA 98074 Cliff.cantor@outlook.com
8	Counsel for Plaintiff
9	Jay Edelson Rafey S. Balabanian
10	Benjamin H. Richman J. Dominick Larry
11	Edelson PC 350 North LaSalle Street
12	Suite 1300 Chicago, IL 60654
13	jedelson@edelson.com rbalabanian@edelson.com
14	brichman@edelson.com nlarry@edelson.com
15	Counsel for Plaintiff
16	DATED this 11th day of February, 2015, at San Francisco, California.
17	
18	s/ Bryan H. Heckenlively
19	Bryan H. Heckenlively MUNGER, TOLLES & OLSON LLP
20	560 Mission Street Twenty-Seventh Floor
21	San Francisco, CA 94105
22	Telephone: 415-512-4000
23	
2425	
26	

DECLARATION OF BRYAN H. HECKENLIVELY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT- 3 (No. 2:14-CV-00463)

ATTORNEYS AT LAW 524 Second Avenue, Suite 500 Seattle, Washington 98104-2323 office 206 587 0700 fax 206 587 2308

CAIRNCROSS & HEMPELMANN, P.S.